

**FINANCIAL INDUSTRY REGULATORY AUTHORITY**  
**LETTER OF ACCEPTANCE, WAIVER AND CONSENT**  
**NO. 20080135542-02**

TO: Department of Market Regulation  
Financial Industry Regulatory Authority ("FINRA")

RE: BMO Capital Markets Corp., Respondent  
Broker-Dealer  
CRD No. 16686

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, BMO Capital Markets Corp. (the "firm") submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against the firm alleging violations based on the same factual findings described herein.

**I.**

**ACCEPTANCE AND CONSENT**

- A. The firm hereby accepts and consents, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by FINRA:

**BACKGROUND**

The firm has been a member of FINRA since October 29, 1985, and its registration remains in effect.

**RELEVANT DISCIPLINARY HISTORY**

The firm has the following relevant disciplinary history:

- On July 7, 2006, an AWC was accepted in which the firm was censured and fined \$22,500 for, among other things, equity trade reporting and SEC Rule 10b-10 violations.

20080135542 (incl. 20080152619, 20090168044, and 20090167442) (DB)

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- On June 13, 2007, an AWC was accepted in which the firm was censured and fined \$10,000 for, among other things, equity trade reporting violations.

### SUMMARY

In connection with matter no. 20080135542, the Short Sales Section of FINRA's Department of Market Regulation reviewed the firm's compliance with SEC and NASD Rules applicable to Regulation SHO requirements during the period from January 1, 2008 through May 31, 2008 (the "short sales review period").

In connection with matter no. 20080152619, the Trade Reporting Team of FINRA's Department of Market Regulation reviewed the firm's compliance with NASD Rules applicable to trade reporting to the FINRA/Nasdaq Trade Reporting Facility ("FINRA/Nasdaq TRF") during the period from May 1, 2008 through August 31, 2008 (the "trade reporting review period").

In connection with matter no. 20090168044, the Fixed Income Team of FINRA's Department of Market Regulation reviewed the firm's compliance with NASD rules applicable to the Trade Reporting and Compliance Engine ("TRACE") during the period from January 1, 2008 through March 31, 2008 (the "TRACE review period").

In connection with the firm's 2009 Trading and Market Making Surveillance Exam matter no. 20090167442, the staff reviewed the trading activity of the firm set forth in Exhibit A for trade dates February 11, 2009 and February 12, 2009 (the "TMMS review period"), unless otherwise noted.

### FACTS AND VIOLATIVE CONDUCT

In connection with matter no. 20080135542,

1. In one instance during the short sales review period, the firm knew or had reasonable grounds to believe that the sale of an equity security was or would be effected pursuant to an order marked long, and failed to deliver the security on the date delivery was due. The conduct described in this paragraph constitutes a violation of SEC Rule 203(a)(1) of Regulation SHO.
2. During the short sales review period, the firm, on six occasions, effected a sale transaction for a customer who was deemed to own the security pursuant to SEC Rule 200 of Regulation SHO. For each transaction, the customer failed to make delivery within 35 days after the trade date and the firm failed to borrow the securities or close out the short positions by purchasing securities of like kind and quantity. The securities and relevant time periods are identified on Exhibit B.

The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 203(b)(2)(ii) of Regulation SHO.

3. During the short sales review period, the firm had a fail-to-deliver position at a registered clearing agency in CORUS Bankshares, Inc. ("CORS"), a threshold security, for 13 consecutive settlement days beginning November 6, 2007, and failed to immediately thereafter close out the fail-to-deliver position by purchasing securities of like kind and quantity. The firm continued to have a fail-to-deliver position in CORS that it failed to close out at the registered clearing agency as required for 39 additional settlement days through January 22, 2008. The conduct described in this paragraph constitutes a violation of SEC Rule 203(b)(3) of Regulation SHO.
4. During the short sales review period, the firm had a fail-to-deliver position at a registered clearing agency in American International Ventures, Inc. ("AIVN"), a threshold security that was sold pursuant to SEC Rule 144, for 35 consecutive settlement days beginning October 23, 2007, and failed to immediately thereafter close out the fail-to-deliver position by purchasing securities of like kind and quantity. The firm continued to have a fail-to-deliver position in AIVN that it failed to close out at the registered clearing agency as required for 100 additional settlement days through May 14, 2008. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 203(b)(3)(ii) of Regulation SHO.
5. During the short sales review period, the firm had a fail-to-deliver position at a registered clearing agency in Redcorp Ventures Ltd ("RDFVF"), a non-reporting threshold security that was sold pursuant to SEC Rule 144, for 35 consecutive settlement days beginning October 23, 2007, and failed to immediately thereafter close out the fail-to-deliver position by purchasing securities of like kind and quantity. The firm continued to have a fail-to-deliver position in RDFVF that it failed to close out at the registered clearing agency as required for 29 additional settlement days through April 11, 2008. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 3210(a)(2).
6. During the short sales review period, the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to certain applicable securities laws and regulations, and/or the Rules of NASD. At a minimum, adequate written supervisory procedures addressing quality of markets topics should describe the following:

(a) specific identification of the individual(s) responsible for supervision;

- (b) the supervisory steps and reviews to be taken by the appropriate supervisor;
- (c) the frequency of such reviews; and
- (d) how such reviews shall be documented.

The firm's written supervisory procedures failed to provide for one or more of the four above-cited minimum requirements for adequate written supervisory procedures, in the following subject areas: sales pursuant to SEC Rule 144 or by prospectus [a], [b], [c], and [d]; and SEC Rule 203(a) [d]. The conduct described in this paragraph constitutes a violation of NASD Rules 2110 and 3010.

In connection with matter no. 20080152619,

- 7. During the trade reporting review period, the firm failed, within 90 seconds after execution, to transmit to the FINRA/Nasdaq TRF 163 last sale reports of transactions in designated securities. These transactions constitute four percent of the transactions reviewed that the firm reported to the FINRA/Nasdaq TRF during the trade reporting review period. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 4632(a) and a pattern or practice of late reporting without exceptional circumstances in violation of NASD Rule 2110.
- 8. During the trade reporting review period, the firm failed to show the terms and conditions on the memorandum of 54 brokerage orders. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 17a-3 and NASD Rule 3110.

In connection with matter no. 20090168044,

- 9. During the TRACE review period, the firm failed to report to TRACE the correct contra-party's identifier for 86 transactions in TRACE-eligible securities. These transactions constituted 31 percent of the inter-dealer transactions in TRACE-eligible securities that the firm reported to TRACE during the TRACE review period. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6230(c)(6).

In connection with matter no. 20090167442,

- 10. During the TMMS review period, the firm failed to prepare accurate customer confirmations on 14 occasions. Specifically, the firm: (1) failed on five occasions to disclose its correct capacity in the transaction, (2) failed on six occasions to disclose that the transaction was executed at an average price, and (3) failed on three occasions to disclose its correct capacity and that the transaction was

executed at an average price. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 10b-10.

11. During the TMMS review period, the firm failed to properly mark 13 orders as long or short. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 200(g) of Regulation SHO.

B. The firm also consents to the imposition of the following sanctions:

A censure, a fine of \$57,500 (\$25,000 for the short sales violations, \$5,000 for the supervisory violations, \$5,000 for the trade reporting violations, \$5,000 for the books and records violations, \$7,500 for the TRACE violations, \$5,000 for the SEC Rule 10b-10 violations, and \$5,000 for the SEC Rule 200(g) violations), and an undertaking to revise the firm's written supervisory procedures with respect to the areas described in paragraph six above. Within 30 business days of acceptance of this AWC by the National Adjudicatory Council ("NAC"), a registered principal of the Respondent shall submit to the **COMPLIANCE ASSISTANT, LEGAL SECTION, MARKET REGULATION DEPARTMENT, 9509 KEY WEST AVENUE, ROCKVILLE, MD 20850**, a signed, dated letter, or an e-mail from a work-related account of the registered principal to [MarketRegulationComp@finra.org](mailto:MarketRegulationComp@finra.org), providing the following information: (1) a reference to this matter; (2) a representation that the firm has revised its written supervisory procedures to address the deficiencies described in paragraph six above; and, (3) the date the revised procedures were implemented.

The firm agrees to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are due and payable. It has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

The firm specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction(s) imposed in this matter.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

## II.

### WAIVER OF PROCEDURAL RIGHTS

The firm specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against the firm;

- B. To be notified of the Complaint and have the opportunity to answer the allegations in writing;
- C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made and to have a written decision issued; and
- D. To appeal any such decision to the NAC and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, the firm specifically and voluntarily waives any right to claim bias or prejudgment of the General Counsel, the NAC, or any member of the NAC, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

The firm further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of FINRA Rule 9143 or the separation of functions prohibitions of FINRA Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

### **III.**

#### **OTHER MATTERS**

The firm understands that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against the firm; and
- C. If accepted:
  - 1. this AWC will become part of the firm's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against the firm;
  - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about the firm's disciplinary record;

3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
  4. The firm may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. The firm may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the firm's right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. The firm may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The firm understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its staff.

April 15, 2011  
Date

By: W. L. Harris

Name: PETER HINMAN

Title: CHIEF OPERATIONS OFFICER

Reviewed by:

### Counsel for Respondent

Accepted by FINRA:

5/22/01  
Date

Signed on behalf of the  
Director of ODA, by delegated authority

*Thomas R. Gira*  
Thomas R. Gira  
Executive Vice President  
Department of Market Regulation

**Exhibit B**

**BMO Capital Markets Corp. ("BMO")  
Matter No. 20080135542**

| <u>ISSUE</u> | <u>Trade Date</u> | <u>Settlement<br/>Date</u> | <u>Delivery Due Date<br/>(T+35)</u> | <u>Delivery<br/>Date</u> | <u>Days Past<br/>T+35</u> |
|--------------|-------------------|----------------------------|-------------------------------------|--------------------------|---------------------------|
| RDFVF        | 12/31/2007        | 1/4/2008                   | 2/4/2008                            | 2/22/2008                | 18                        |
| RDFVF        | 1/10/2008         | 1/15/2008                  | 2/14/2008                           | 4/14/2008                | 60                        |
| AIVN         | 10/18/2007        | 10/23/2007                 | 11/22/2007                          | 5/15/2008                | 175                       |
| AIVN         | 10/19/2007        | 10/24/2007                 | 11/23/2007                          | 5/15/2008                | 174                       |
| AIVN         | 10/24/2007        | 10/29/2007                 | 11/28/2007                          | 5/15/2008                | 169                       |
| AIVN         | 11/7/2007         | 11/13/2007                 | 12/12/2007                          | 5/15/2008                | 155                       |